

### **REMARKS**

Claims 1-5, 7-10, and 12-16 are now pending in the application. By this paper, Claims 6 and 11 have been cancelled without prejudice or disclaimer of the subject matter contained therein. The following remarks are believed to be fully responsive to the outstanding Office Action and are believed to place the application in condition for allowance. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the remarks contained herein.

#### **REJECTION UNDER 35 U.S.C. § 112**

Claim 6 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention.

This rejection is respectfully traversed.

Applicant respectfully submits that this rejection is moot as Claim 6 has been cancelled without prejudice. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

#### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-3, 7 and 14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Aoyagi (U.S. Publication 20040135243).

Claim 11 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Nishimura (U.S. Pat. No. 6,781,241).

Claims 12 and 16 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Aoyagi (U.S. Publication 20040135243).

Claim 13 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Aoyagi (U.S. Publication 20040135243).

These rejections are respectfully traversed.

Applicant respectfully submits that this rejection is moot with respect to Claim 11 as Claim 11 has been cancelled without prejudice. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Aoyagi (U.S. Publication No. 2004/0135243A1) is a U.S. application for patent published under 35 U.S.C. § 122(b). For Aoyagi to qualify as a prior art reference under 35 U.S.C. § 102(e) it must satisfy the requirements of §102 which states that a person shall be entitled to a patent unless:

(e) the invention was described in – (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Aoyagi has a U.S. filing date of November 21, 2003. The present application has a U.S. filing date of March 16, 2004 but claims priority to Japanese Patent Application No. JP 2003-074219 filed on March 18, 2003. To perfect the claim of priority, a sworn translation of Japanese Patent Application No. JP 2003-074219 filed on March 18, 2003 is attached. Thus, the present application has an effective filing date of March 18, 2003 and Aoyagi does not qualify as prior art under 35 U.S.C. § 102(e).

As Aoyagi does not qualify as prior art under 35 U.S.C. § 102(e), Applicant respectfully submits that independent Claims 1, 12-14, and 16, as well as Claims 2-5, 7-10, and 15, respectively dependent therefrom, are in condition for allowance. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

**REJECTION UNDER 35 U.S.C. § 103**

Claims 1-5, 7-10 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishimura et al. (U.S. Pat. No. 6,781,241) in view of Aoyagi (U.S. Publication 20040135243).

Claims 12 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishimura et al. (U.S. Pat. No. 6,781,241) in view of Aoyagi (U.S. Publication 20040135243).

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishimura et al. (U.S. Pat. No. 6,781,241) in view of Aoyagi (U.S. Publication 20040135243).

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishimura et al. (U.S. Pat. No. 6,781,241), Aoyagi (U.S. Publication 20040135243) and Wachtler (U.S. Publication 20030022465).

These rejections are respectfully traversed.

Because Aoyagi does not qualify as prior art, Applicant respectfully submits that combining Aoyagi with Nishimura and/or Wachtler, is improper. In this manner, Applicant's invention is not taught or suggested by the prior art of record and reconsideration and withdrawal of the rejection is respectfully requested.

In this regard, it is believed that independent Claims 1, 12-14, and 16, as well as Claims 2-5, 7-10, and 15, respectively 'dependent therefrom, are in a condition for allowance in light of the art of record. Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

#### CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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